

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

04/11/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000591

FILED: _____

STATE OF ARIZONA

JENNIFER E GREEN

v.

JAMES CHRIS STERLING

JAMES S DUNHAM

GILBERT CITY COURT
REMAND DESK CR-CCC

MINUTE ENTRY

GILBERT CITY COURT

Cit. No. #01CR506MI

Charge: CT 1. DISORDERLY CONDUCT
CT 2. DOMESTIC VIOLENCE

DOB: 04/30/64

DOC: 04/09/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since the time of oral argument on March 13, 2002. This decision is made within

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30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the Gilbert City Court, the Memoranda submitted by counsel and oral arguments of counsel.

Appellant was convicted after a trial of Disorderly Conduct, a class 1 misdemeanor in violation of A.R.S. Section 13-2901(A)(1); and Assault, a class 3 misdemeanor in violation of A.R.S. Section 13-1203(A)(3), both Domestic Violence offenses. Appellant claims that the trial judge erred in denying his Motion for New Trial and Motion to Vacate Judgment. In a detailed order dated August 10, 2001, the trial judge denied Appellant's Motion for New Trial as untimely. The trial court also denied Appellant's Motion to Vacate Judgment finding the "newly discovered impeachment evidence" to be cumulative and not of such nature to have "substantially undermined her (the victim's) testimony regarding the assault and the court cannot say this evidence probably would have changed the verdict."¹

The standard of review that this Court must use in determining these issues is abuse of discretion.²

Appellant correctly contends that the bias and motives of the State's witnesses in testifying against him are relevant.³ However, even evidence that is otherwise relevant may be excluded under Rule 403, Arizona Rules of Evidence as "cumulative evidence".

The trial court's findings of fact appear to be supported by the trial court record.

IT IS THEREFORE ORDERED affirming the judgments of guilt and sentences imposed.

¹ Minute entry order of August 10, 2001, record on appeal from Gilbert City Court.

² See, *State v. Jeffers*, 135 Ariz. 404, 661 P.2d 1105 (1983).

³ Id.; *State v. Uriarte*, 194 Ariz. 275, 981 P.2d 575 (App. 1998).

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IT IS FURTHER ORDERED remanding this case back to the
Gilbert City Court for all further and future proceedings.